



**South Carolina Department of
Labor, Licensing and Regulation**

South Carolina Board of Dentistry

NEWSLETTER

Fall 2009

David W. Jones, DMD, Editor

Issue No. 50

Mission Statement

To protect the public health, safety and welfare in the State of South Carolina by the licensure and regulation of dentists, dental hygienists and dental technicians.

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Board Member News

The Board welcomes its newest member, **Dr. Douglas J. Alterman**, of Charleston, winner of the recent Board election. Upon appointment by Governor Mark Sanford, Dr. Alterman will represent the 1st Congressional District, effective Jan. 1, 2010.

The Board must say farewell to **Dr. C. Timothy Assey**, of Charleston, whose six-year term will expire Dec. 31, 2009. The Board thanks Dr. Assey for his outstanding service and leadership and wishes him well in his future endeavors.

The Board must also say farewell to **Dr. Charles E. Millwood, Jr.**, of Columbia, who retired from the Board effective July 11, 2009. The Board thanks Dr. Millwood for his dedication and service and extends best wishes to him for a happy and well-earned retirement.

Board Officers

PRESIDENT (until 12/31/09)	- Dr. C. Timothy Assey
PRESIDENT (1/01/10 – 6/30/10)	- Dr. Felicia L. Goins
V PRESIDENT (7/01/09 – 6/30/10)	- Dr. Thomas M. Dixon
SECRETARY (7/01/09 – 6/30/10)	- Dr. David W. Jones

X-Ray Certification

Dental assistants must pass a Board-approved radiation safety course before they are allowed to take X-rays within a dental office in South Carolina. Board Regulation 39-16 requires that the employer dentist be responsible for the verification of credentials of dental assistants who expose radiographs in his/her office, and must certify that all personnel in his/her dental office who expose radiographs have met the required training by obtaining certification from a Board-approved certification program.

Board-approved courses include those developed/sponsored by:

- American Dental Association (ADA)-accredited schools and their constituents;
- Dental Assisting National Board, Inc. (DANB);
- South Carolina Dental Association (SCDA).

Successful completion of a course from any of these programs meets the requirements of the S.C. Dental Practice Act. The Board no longer issues radiography certificates. **Note:** The SCDA offers an online radiation safety course. For information / application, contact the SCDA at (803) 750-2277 or visit its Web site at www.scda.org.

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SUMMARY OF PROCEDURES that can be delegated to Dental Hygienists and Dental Assistants

Please note that this summary is provided for information only. Unless otherwise specifically stated, the information contained herein is made available to the public for informational purposes only. No legal liability or responsibility is assumed for the accuracy, completeness, or usefulness of the information presented. Please refer to the Dental Practice Act statutes and regulations as well as legal counsel of your own choosing for further guidance.

I. PRIVATE DENTAL OFFICE under DIRECT SUPERVISION

Direct Supervision means that a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and before the dismissal of the patient, evaluates the performance of the auxiliary. This requirement does not mandate that a dentist be present at all times, but he or she must be on the premises actually involved in supervision and control. **40-15-85(1).**

Authorized means the supervising dentist in a private office setting has personally approved the procedures to be performed and is responsible for the care provided to the patient. **40-15-102(A).**

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Assist in basic supportive chairside procedures	√	√	√
Chart existing restorations, clinically missing teeth, and appliances within the oral cavity	√	√	√
Apply topical drugs as prescribed by the Board	√	√	√
Place and remove rubber dam	√	√	√
Place and remove matrix	√	√	√
Place and remove orthodontic ligatures	√	√	√
Take and record vital signs (blood pressure, pulse, etc.)	√	√	√
Expose radiographs upon completion of Board-approved radiation safety course	√	√	√
Place and remove periodontal packs	√	√	√
Remove sutures	√	√	√
Take impressions for study models	√	√	
Place and remove socket dressing	√	√	
Place gingival retraction cord	√	√	
Place temporary restorations	√	√	
Cement temporary crowns or bridges	√	√	
Remove excess cement from restorations and/or appliances	√	√	
Polish restorations and supragingival tooth structure	√	√	
Application of pit and fissure sealant	√	√	
Monitor nitrous oxide conscious sedation upon certification by the Board	√	√	
Administration of local infiltration anesthesia upon certification by the Board	√		
Complete prophylaxis to include scaling, root planning, performing clinical examination	√		
Oral hygiene and instruction	√	√	√
The procedures listed below are authorized / not authorized in accordance with Board policies:			
Dental hygienists and dental assistants are <u>not</u> authorized to establish an IV line. They are <u>not</u> authorized to draw sedative drugs into a syringe, <u>nor</u> are they authorized to deliver drugs into an established IV line. Board policy adopted 10/31/08.			
Perform isolation and clean-up procedures related to laser bleaching of teeth in dental office. Board policy adopted 6/24/01.	√	√	√
Licensed dental hygienists are authorized to place subgingival therapeutic chemicals (i.e., Actisite, Perio chip, Atridox, etc.) at the direction and under the direct supervision of a practicing licensed dentist upon completion of a minimum one-hour training session as recommended by the manufacturer. Dental assistants and expanded duty dental assistants are <u>not</u> authorized to place subgingival therapeutic chemicals. Board policy adopted 10/31/08.	√		
Dental hygienists and dental assistants are <u>not</u> authorized to perform botox injections. Board policy adopted 4/01/09.			
Intra-oral camera (does not include scanner for final impressions)	√		

Dental Assistant - No formal academic dental training is required for dental assistants. **Reg. 39-12.**

Expanded Duty Dental Assistant - a dental assistant who is a graduate of an ADA accredited dental assisting program, or one who has completed two (2) years of continuous full-time employment as a chairside dental assistant. **Reg. 39-13.**

Dental Hygienist – one who engages in those clinical procedures primarily concerned with the performance of preventive dental services not constituting the practice of dentistry, including removing all hard and soft deposits and stains from the surfaces of human teeth, root planning, performing clinical examination of teeth and surrounding tissues, and charting of oral conditions for diagnosis by a dentist, and performing such other procedures as may be delegated by regulations of the Board. **40-15-80(A).**

Oral prophylaxis means the removal of any and all hard and soft deposits, accretions, toxins, and stain from any natural or restored surfaces of teeth or prosthetic devices by scaling and polishing as a preventive measure for the control of local irritational factors. **40-15-85(3).**

Monitor Nitrous Oxide Conscious Sedation – carrying out orders of the dentist, including initiation of flow of nitrous oxide component. Auxiliary may then maintain that flow or decrease the level of nitrous oxide when oxygenating patient, without specific direction of dentist. The dentist must determine need and level of nitrous oxide sedation regarding a particular patient. **Board Policy adopted 6/24/01.**

II. PRIVATE DENTAL OFFICE under GENERAL SUPERVISION with authorization by supervising dentist.

In a private dental office setting, a dental hygienist may only perform the following functions under general supervision: (1) oral prophylaxis and assessment; (2) fluoride treatment; (3) oral hygiene instruction and education; (4) exposure and process of radiographs as directed by standard office protocol. **40-15-102(B).**

A dentist in a private office setting may authorize general supervision only upon meeting the following criteria: (1) A new patient of record must be clinically examined by the authorizing dentist during the initial visit; 2) An appointed patient must be examined by the authorizing dentist at a minimum of twelve (12) month intervals; and 3) An appointed patient must be notified in advance of the appointment that he/she will be treated by the dental hygienist under general supervision without authorizing dentist being present or being examined by the authorizing dentist. **40-15-102(C).**

General Supervision means that a licensed dentist or the S.C. Department of Health and Environmental Control's public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed. **40-15-85(2).**

Authorized means the supervising dentist in a private office setting has personally approved the procedures to be performed and is responsible for the care provided to the patient. **40-15-102(A).**

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Oral prophylaxis and assessment	√		
Fluoride treatment	√		
Exposure and process of radiographs as directed by standard office protocol	√		
Oral hygiene instruction and education, perform oral screenings, and provide nutrition and dietary counseling without prior authorization	√		
Intra-oral camera (does not include scanner for final impressions)	√		

III. SCHOOL SETTINGS under GENERAL SUPERVISION and written permission of student's parent/guardian [unless the dentist or dental hygienist is working in a public health setting with DHEC]

In school settings, licensed dental hygienists may apply topical fluoride and may perform the application of sealants and oral prophylaxis under general supervision, with written permission of the student's parent or guardian. **40-15-80(B).**

A dentist authorizing treatment by a dental hygienist in school settings or nursing home settings is subject to the general supervision restrictions provided for in this section unless the dentist or dental hygienist is working in a public health setting with the Department of Health and Environmental Control, as provided for in Section 40-15-110. **40-15-102(D).**

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Apply topical fluoride	√		
Perform application of sealants	√		
Oral prophylaxis	√		
Exposure and process of radiographs as directed by standard office protocol.	√		

IV. HOSPITALS, NURSING HOMES, LONG TERM CARE FACILITIES
under GENERAL SUPERVISION and provided medical emergency care is available within the facility
unless the dentist or dental hygienist is working in a public health setting with DHEC

In hospitals, nursing homes, long term care facilities, rural and community clinics, health facilities operated by federal, state, county, or local governments, hospices, education institutions accredited by the Commission on Dental Accreditation that give instruction in dental hygiene, and in bona fide charitable institutions, licensed dental hygienists may apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision. Treatment may not occur in these settings unless medical emergency care is available within the facility. **40-15-80(C).**

A dentist authorizing treatment by a dental hygienist in school settings or nursing home settings is subject to the general supervision restrictions provided for in this section unless the dentist or dental hygienist is working in a public health setting with the Department of Health and Environmental Control, as provided for in Section 40-15-110. **40-15-102(D).**

General Supervision means that a licensed dentist or the S.C. Department of Health and Environmental Control's public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed. **40-15-85(2).**

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Apply topical fluoride	√		
Perform application of sealants	√		
Oral prophylaxis	√		
Exposure and process of radiographs as directed by standard office protocol.	√		

V. PUBLIC HEALTH SETTINGS WORKING WITH DHEC

Examination of patient is not required.

Services are to be performed under the direction of DHEC State Dental Coordinator or the Department's designee but do not require the coordinator be present when the services are performed.

Public Health Setting - defined as a hospital, nursing home, long term care facility, rural or community health clinic, health facility operated by federal, state, county, or local governments, hospice, an education institution, a bona fide charitable institution, or a mobile delivery program operated in one of these settings under the direction of the Department of Health and Environmental Control. Mobile delivery programs are defined as those that are not confined to a single building and can be transported from place to place. **40-15-110(E).**

Public Health Dental Program Services – includes oral screenings using a DHEC-approved screening system, oral prophylaxis, application of topical fluoride including varnish, and the application of dental sealants. **40-15-110(A)(10).**

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Oral prophylaxis and assessment.	√		
Application of topical fluoride including varnish.	√	√	√
Exposure and process of radiographs as directed by standard office protocol.	√		
Application of dental sealants	√		
Oral screenings using DHEC approved screening system.	√	√	√
Assist in the delivery of public health dental program services as defined in 40-15-110(E): oral screenings using DHEC approved screening system, oral prophylaxis, application of topical fluoride including varnish, and application of dental sealants. 40-15-110(G)	√	√	√
Perform other duties authorized by regulations of the State Board of Dentistry.	√	√	√

Rev. 11/09

Online Services

The following services are available online 24 hours a day, seven days per week at www.lhr.state.sc.us/pol/Dentistry:

- Online Renewals
- Change of Address
- License Verification Request

- Check Status of Application
- Licensee Lookup
- Online Jurisprudence Examination

Online Jurisprudence Exam

The S.C. jurisprudence examination (Dental Practice Act Exam) is now available online. It can be accessed by clicking the online services link on the Board's Web page at: www.llr.state.sc.us/POL/Dentistry. Once an applicant has met licensure requirements, he/she will be mailed a letter with a **user id** and **password** that will allow applicant to access the exam. Once the exam is completed and answers submitted, the applicant will receive his/her test score immediately by email. The Board office will also be notified by email. With a passing score, the applicant will be able to print or save a certificate of completion for his/her records. If the applicant is not successful, he/she may retake the examination after 24 hours.

The only authorized sources of assistance for completing this examination are listed below. Applicants may download these sources at the Board's Web page by clicking on the "laws/policies" link.

- South Carolina Dental Practice Act – SC Code of Laws, Chapter 15, Title 40
- Regulations of the Board of Dentistry – Chapter 39
- CDC Guidelines for Infection Control in Dental Health-Care Settings – 2003

Mobile Dentistry Registration Update

In accordance with Board Reg. 39-18 (effective 2/27/09), operators of mobile dental facilities and portable dental operations in South Carolina are required to register their facilities/operations with the Board. The registrant must complete an application for registration, pay the \$150 registration fee, and make arrangements to have his/her facility/operation inspected by a representative of LLR/Board. The mobile dental facility or portable dental operation must pass an initial inspection before registration can be issued. Upon satisfactory inspection, registrants are issued a permit sticker with a registration number to be affixed to their facilities/operations. The 2010 registration is valid until June 30, 2010, at which time registration must be renewed.

Mobile dental facilities must be inspected annually upon renewal of registration. Portable dental operations are inspected upon initial registration only, unless there has been a substantial repair, replacement or modification made that requires inspection in the interest of patient safety before use on patients.

As of the printing of this newsletter, five mobile dental facilities and 23 portable dental operations have been inspected and registered.

For your information and review, Board Reg. 39-18 and Section 40-15-172 of the S.C. Dental Practice Act appear below.

Regulation 39-18. Mobile Dental Facilities and Portable Dental Operations.

A. Applicability.

This regulation applies to an organization or dental practice utilizing a licensed dentist or dental hygienist to operate a mobile dental facility or portable dental operation who:

- (1) provides dental or dental hygiene services; and
- (2) does not have a physically stationary office at the location where the services are provided.

B. Exceptions.

(1) Federal, state, and local governmental agencies as well as Federally Qualified Health Centers (FQHCs) are exempt from the requirements of this regulation.

(2) Dentists licensed to practice in South Carolina who have not registered with the Board to operate a mobile dental facility or a portable dental operation may provide dental services through the use of dental instruments, materials, and equipment taken out of a dental office without registering if the service is provided as emergency treatment for their patients of record.

C. Definitions.

As used in this regulation unless the context indicates otherwise:

(1) Mobile dental facility means any self-contained facility in which dentistry or dental hygiene will be practiced, which may be moved, towed, or transported from one location to another.

(2) Portable dental operation means dental equipment utilized in the practice of dentistry or dental hygiene that is transported to and utilized on a temporary basis at an out-of-office location, including, but not limited to:

- (a) other dentists offices;
- (b) patients homes;
- (c) schools;
- (d) nursing homes; or
- (e) other institutions or locations.

(3) Operator means the organization or dental practice engaged in providing dental or dental hygiene services directly or through persons authorized by law to provide the services.

(4) Organization or dental practice means persons or entities that provide dental or dental hygiene services to others.

D. Registration.

(1) In order to operate a mobile dental facility or portable dental operation, the operator shall first register with the Board.

(2) For registration purposes, each mobile dental facility or portable dental operation must be registered. Such registration may not be issued until the mobile dental facility or portable dental operation has passed an inspection as provided in this regulation.

(3) The applicant shall complete an application in the form and manner required by the Board.

(4) The applicant shall pay the initial registration fee of \$150.00 at the time of application or as set by the Board in accordance with Section 40-1-50.

(5) The applicant shall provide the Board with evidence of compliance with the requirements of this regulation.

(6) The applicant shall submit proof of any applicable radiographic equipment inspection with the application for registration.

E. Inspection.

(1) An initial inspection of each mobile dental facility or portable dental operation shall be conducted by a representative of the Department/Board at a time and place to be designated by staff. Inspections may be scheduled throughout the year. Upon satisfactory inspection, the registrant will be issued a sticker, with the current year indicated, to be affixed to the mobile dental facility or portable dental operation in a place designated by the Board.

(2) Mobile dental facilities shall be inspected annually upon renewal of registration.

(3) Portable dental operations shall be inspected upon initial registration. Thereafter, the registration may be renewed annually without inspection, unless there has been a substantial repair, replacement, or modification made that requires inspection in the interest of patient safety before use on patients.

F. Official business or mailing address.

(1) The operator of a mobile dental facility or portable dental operation shall maintain an official business address of record, which shall not be a post office box and which shall be filed with the Board. A mailing address, if different than the business address and used on an official basis, shall be provided as well.

(2) The operator of a mobile dental facility or portable dental operation shall maintain an official telephone number of record, which shall be filed with the Board.

(3) The Board shall be notified within thirty (30) days of any change in the address or telephone number of record.

(4) All written or printed documents available from or issued by the mobile dental facility or portable dental operation shall contain an official address and telephone number of record for the mobile dental facility or portable dental operation.

(5) All dental and official records shall be maintained and available for inspection and copying upon request by the representatives of the Board.

G. Written procedures; communication facilities; conformity with requirements.

The operator of a mobile dental facility or portable dental operation shall ensure the following:

(1) There is a written procedure for emergency or follow-up care for patients treated in the mobile dental facility or portable dental operation and that such procedure includes prior arrangements for emergency or follow-up treatment in a medical or dental facility, as may be appropriate, that is located in the area where services are being provided.

(2) The mobile dental facility has communication devices to enable immediate contact with appropriate persons in the event of a medical or dental emergency. The communications devices must enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The provider who renders follow-up care must also be able to contact the operator and receive treatment information, including radiographs.

(3) The mobile dental facility complies with all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, OSHA guidelines, access by persons with disabilities as required by state and federal law, and federal Centers for Disease Control Guidelines, and the applicant possesses all applicable county and city licenses or permits, including business licenses, to operate the unit at the location where services are being provided.

(4) The mobile dental facility has carbon monoxide detection devices installed and in proper working order.

(5) No services are performed on minors without a signed consent form from the parent or guardian.

(6) During or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient, or patient's parent or guardian if the patient is a minor, is provided with an information sheet and that if the patient has provided consent to an institutional facility to assist in the patient's dental health records, the institution is provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long term care facility or school, and that the information sheet includes the following:

(a) pertinent contact information as provided by this section;

(b) the name of the dentist and other dental staff who provided services and their license numbers, if applicable;

(c) a description of the treatment rendered, including billed service codes and, in the instance of fee for service patients, fees associated with treatment and tooth numbers when appropriate;

(d) a description of any dental needs either observed during a hygienist's screening or diagnosed during a dentist's evaluation;

(e) a recommendation that the patient see another dentist if the mobile dental facility or the portable dental operation is unable to provide the follow-up treatment described in subitem (d).

H. Follow-up treatment services.

A mobile dental facility that accepts a patient and provides preventive treatment, including prophylaxis, radiographs, and fluoride, but does not follow-up with treatment or follow-up on referral for treatment when such treatment is clearly indicated, is considered to be abandoning the patient. Appropriate and accessible (within the patient's geographic area) arrangements must be made for treatment services on a follow up basis. Reasonable attempts to have follow up treatment in an instance where a patient does not re-appear for treatment or does not meet a scheduled appointment is not abandonment.

I. Physical requirements for mobile dental facility.

The operator shall ensure that the mobile dental facility or portable dental operation has the following:

- (1) ready access to a ramp or lift if services are provided to disabled persons;
- (2) a properly functioning sterilization system;
- (3) ready access to an adequate supply of potable water, including hot water;
- (4) ready access to toilet facilities;
- (5) a covered galvanized, stainless steel, or other noncorrosive container for deposit of refuse and waste materials.

J. Identification of personnel; notification of changes in written procedures; display of licenses.

(1) The operator shall identify and advise the Board in writing within thirty (30) days of any personnel change relative to all licensed dentists and licensed dental hygienists associated with the mobile dental facility or portable dental operation by providing the full name, address, telephone numbers, and license numbers where applicable.

(2) The operator shall advise the Board in writing within thirty (30) days of any change in the written procedure for emergency follow-up care for patients treated in the mobile dental facility, including arrangements for treatment in a dental facility, which is permanently established in the area. The permanent dental facility shall be identified in the written procedure.

(3) Each dentist and dental hygienist providing dental services in the mobile dental facility or portable dental operation shall prominently display his or her authorization to practice in this State in plain view of patients.

K. Identification of location of services.

(1) Each operator of a mobile dental facility or portable dental operation shall maintain a confidential written or electronic record detailing for each location where services are provided, including:

- (a) the street address of the service location;
- (b) the dates and times of each session;
- (c) the number of patients served; and
- (d) the types of dental services provided to each patient by name and quantity of each service provided.

(2) The confidential written or electronic record shall be made available to the Board within ten (10) days of a request by the Board. Costs for such records shall be borne by the mobile dental facility or portable dental operation.

L. Licensed dentist in charge.

A mobile dental facility or portable dental operation shall at all times be in the charge of a dentist licensed to practice dentistry in this State, who is responsible for services provided at the mobile dental facility or portable dental operation.

M. Prohibited operations.

The operator of a mobile dental facility or portable dental operation is prohibited from hiring, employing, allowing to be employed, or permitting to work in or about a mobile dental facility or portable dental operation, any person who performs or practices any occupation or profession regulated under Title 40 who is not duly authorized in accordance with state law.

N. Information for patients.

(1) During or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient shall be provided with an information sheet. If the patient has provided consent to an institutional facility to access the patient's dental health records, the institution shall also be provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long term care facility or school.

(2) An information sheet shall include the following:

- (a) pertinent contact information as required by this regulation;
- (b) the name of the dentist and other dental staff who provided services and their license numbers, if applicable;
- (c) a description of the treatment rendered, including billed service codes and, in the instance of fee for service patients, fees associated with treatment, and tooth numbers when appropriate;
- (d) a description of any dental needs either observed during a dental hygienist's screening or diagnosed during a dentist's evaluation;
- (e) if necessary, referral information to another dentist.

O. Cessation of operations.

(1) Upon cessation of operation by the mobile dental facility or portable dental operation, the operator shall notify the Board within thirty (30) days of the last day of operations in writing of the final disposition of patient records and charts.

(2) If the mobile dental facility or portable dental operation is sold, a new registration application must be filed with the Board.

(3) Upon choosing to discontinue practice or services in a community, the operator of a mobile dental facility or portable dental operation shall:

(a) notify all of the operator's active patients in writing, or by publication once a week for three (3) consecutive weeks in a newspaper of general circulation in the community, that the operator intends to discontinue the mobile dental facility's or portable dental operation's practice in the community; and

(b) encourage the patients to seek the services of another dentist.

(4) The operator shall make reasonable arrangements with the active patients of the mobile dental facility or portable dental operation for the transfer of the patient's records, including radiographs or copies thereof, to the succeeding practitioner or, at the written request of the patient, to the patient.

(5) As used in this section, active patient applies and refers to a person whom the mobile dental facility or portable dental operation has examined, treated, cared for, or otherwise consulted with during the two (2) year period prior to discontinuation of practice, or moving from or leaving the community.

P. Renewal of registration.

(1) The registration of mobile dental facilities and portable dental operations shall be renewed in accordance with a schedule set by the Department of Labor, Licensing and Regulation and the forms approved by the Board on the dates in the form and manner provided by the Board.

(2) The registrant shall pay the registration renewal fee in an amount set by the Department of Labor, Licensing and Regulation.

Q. Failure to comply.

Failure to comply with state statutes or regulations regulating the practice of dentistry, dental hygiene, and the operation of mobile dental facilities or portable dental operations may subject the operator and all practitioners providing services through a mobile dental facility or portable dental operation to disciplinary action.

Section 40-15-172. Mobile Dental Facilities or Mobile Dental Operations; Registration; Operating Requirements.

(A)(1) An organization or dental practice utilizing a licensed dentist to operate one or more mobile dental facilities or portable dental operations shall register with the board by submitting an application in the form and manner required by the board and shall pay a registration fee, as established by the board in regulation. These fees must be adjusted in accordance with Chapter 1 of Title 40.

(2) If the ownership of a mobile dental facility or portable dental operation changes, a new registration must be obtained from the board.

(3) An applicant shall submit proof of registration with the Secretary of State, as may be required by law, authorizing the entity to do business in this State.

(B) A registrant, in addition to the other requirements of this section, shall ensure that:

(1) a dentist licensed to practice in this State is responsible at all times for services provided at a mobile dental facility or portable dental operation;

(2) dental services provided at a mobile dental facility or portable dental operation are provided by persons authorized by law to provide these services;

(3) each dentist and dental hygienist providing dental services in a mobile dental facility or portable dental operation displays his or her authorization to practice in this State in plain view of patients;

(4) dental and official records are maintained and available for inspection and copying upon request by the board;

(5) a confidential written or electronic record is maintained at a central office location or portable dental operation documenting each location where services are provided, including:

(a) the street address of the service location;

(b) the dates and times at each service location;

(c) the dental services provided to each patient by name;

(6) confidential written or electronic records, maintained in accordance with item (5), are available to the board on request and that costs for providing these records are borne by each mobile dental facility or portable dental operation;

(7) a written procedure for emergency or follow-up care for patients treated in the mobile dental facility or portable dental operation is kept where services are being provided and that this procedure includes prior arrangements for emergency or follow-up treatment in a medical or dental facility, as may be appropriate, located in the area where services are being provided;

(8) communication devices are available to enable immediate contact with appropriate persons in the event of a medical or dental emergency;

(9) the mobile dental facility or portable dental operation complies with all applicable federal, state, and local laws, regulations, and ordinances including, but not limited to, those concerning radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, OSHA guidelines, and federal Centers for Disease Control guidelines, and the registrant possesses all applicable county, state, and city licenses or permits to operate the unit at the location where services are being provided; and that carbon monoxide detection devices are installed and in proper working order in mobile dental facilities only;

(10) during or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient, or patient's parent or guardian if the patient is a minor, is provided with an information sheet and that if the patient has provided consent to an institutional facility to assist in the patient's dental health records, the institution is provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long-term care facility or school, and that the information sheet includes the following:

(a) pertinent contact information as provided by this section;

(b) the name of the dentist and other dental staff who provided services and their license numbers, if applicable;

(c) a description of the treatment rendered, including billed service codes and, in the instance of fee for service patients, fees associated with treatment and tooth numbers when appropriate;

(d) a description of any dental needs either observed during a hygienist's screening or diagnosed during a dentist's evaluation;

(e) recommendation that the patient see another dentist if the mobile dental facility or the portable dental operation is unable to provide the follow-up treatment described in subitem (d);

(11) patient records are maintained by the registrant in a secure manner and that notice is given to the board not less than thirty days before any transfer of records from the registrant's possession.

(C) A violation of a provision of law or regulation regulating the practice of dentistry, dental hygiene, or the operation of mobile dental facilities or portable dental operations may result in disciplinary action as provided in this chapter.

(D) A person or entity that is not registered with the board in accordance with this section is not entitled to reimbursement or other compensation for any services provided in this State.

(E) For the purposes of this section "mobile dental facility or portable dental operation" means a facility or operation that is not confined to a single building and that can be transported from place to place.

Board Policy

Patient Dental Records

Pursuant to S.C. Code Ann. Sections 40-15-40 and 40-15-83; Board Regulation 39-11.1-B

The Board continues to receive questions regarding patient dental records. The policy below was adopted by the Board on Aug. 24, 2002.

POLICY

S.C. Code Ann. Section 40-15-40 authorizes the Board to adopt rules and regulations for its own organization and for the practice of dentistry, dental hygiene and the performance of dental technological work in this State. Board Regulation 39-11.1-B states, "Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information that will be beneficial for the future treatment of that patient."

PROCEDURES

Patient dental records must be maintained in such a manner that a subsequent treating dentist can readily ascertain the treatment provided by the performing dentist and include, at a minimum, documentation of:

1. Personal information;
2. Concise medical history;
3. All patient office visits and other consultations obtained;
4. All prescriptions written including date, type(s) of medications, and number (quantity) prescribed;
5. All therapeutic and diagnostic procedures performed;
6. All written patient instructions and written agreements;
7. Most recent dental charting and periodontal examination, if applicable;
8. Most recent full mouth radiographic survey or panograph, or detailed written report on radiographic finding in lieu of physical radiographs, if applicable;
9. Most recent bitewing radiographs, or a detailed written report on radiographic findings in lieu of physical radiographs, if applicable;
10. All pathology or medical laboratory reports, if applicable;
11. Anesthesia records, if applicable;
12. All initial orthodontic diagnostic records, including pretreatment study models, photographs, cephalometric radiographs and cephalometric analysis, if applicable, or a detailed written report in lieu of the physical records.
13. Correspondence with consultants or specialists, if applicable.
14. Treatment plan and progress notes.

Dental records are the property of the dentist who performs the dental service; however, a patient who requests his/her records shall have access to such records. Copies of patient records and/or x-rays, or summaries thereof, must be made available to the patient and/or new dentist upon submission of a written release authorization, in a reasonable manner and upon reasonable costs associated with providing such record. This obligation exists whether or not the patient's account is paid in full.

In accordance with Section 40-15-83, dentists shall retain their patient records for at least five (5) years. These minimum recordkeeping periods begin to run from the last date of treatment. After these minimum recordkeeping periods, the records may be destroyed. If a dentist is employed by a corporation or another dentist, the corporation or employing dentist is responsible for maintaining the patient records for a period of five (5) years. The practicing dentist shall have access to these patient records during that period.

Policy adopted by the Board Aug. 24, 2002

New Board Policies

In accordance with the 1976 Code of Laws of South Carolina, as amended, notice is hereby given that the State Board of Dentistry has adopted the following statements as guidance for dentists in the practice of dentistry under the South Carolina Dental Practice Act, Regulations and the Principles of Ethics as adopted by the Board.

Economics Relationship Policy

S.C. Code Sections 40-15-83, 40-15-100, 40-15-120, 40-15-190

Protection of the public is the overriding concern of the Board. While the economic relationship is not a direct regulatory concern of the Board, the licensee must at all times control the exercise and practice of his or her practice of dentistry and must at all times exercise independent professional judgment regardless of the economic relationship or business form involved.

Licensees are subject to all provisions of the Dental Practice Act regardless of the economic relationship. This includes recordkeeping and documentation, patient record retention and supervision requirements. Unlicensed persons are not permitted to practice dentistry. Licensees may not employ or permit an unlicensed person to practice dentistry or dental hygiene. It is unlawful and unprofessional for a licensee who engages in the practice of dentistry to permit a person other than a licensed dentist to direct, participate in or interfere with the licensee's practice of dentistry.

Consequently, licensees should not enter into any agreement or associate themselves with a practice arrangement which permits a person other than a licensed dentist to direct, participate in, or interfere with the licensee's practice of dentistry and independent professional judgment.

To the extent that the licensee's economic relationship complies with this policy and is otherwise authorized by applicable law, it is authorized by the licensing law of this State governing dentists. It is the responsibility of each individual practitioner to ensure that he or she practices only within the lawful scope of practice as provided by the applicable practice act and other State law. It is further the responsibility of non-licensees to refrain from any activities which constitute the practice of dentistry. As required by law, complaints received by the Board concerning unlicensed practice or other violations of the Dental Practice Act by licensees will be investigated and appropriate disciplinary action or other enforcement actions taken as warranted by the individual facts and circumstances. As such, it

is the policy of the Board of Dentistry to collect sufficient information concerning the economic relationship to enforce the provisions of the Dental Practice Act.

Policy adopted by the Board on April 10, 2009.

Botox and Other Injectables

S.C. Code Section 1-23-40

Because treatments by injection involve the destruction of human tissue, and because the proper use of injection devices requires specialized training, this procedure may be performed by a dentist properly licensed in South Carolina subject to certain restrictions. The injection of Botox and other injectables should only be performed by a dentist licensed in South Carolina in accordance with the following criteria:

1. The informed consent of the patient must be obtained and documented and a record of treatment in accordance with the Dental Practice Act must be created.
2. A bona fide dentist-patient relationship must be established.
3. The procedure should be performed only in an appropriate clinical setting that ensures resuscitative capabilities and sterility.
4. The dentist must remain on-site and be immediately available for any problems that may occur. The dentist must perform and otherwise direct the course of the patient's treatment.
5. Procedures of this nature are limited to the perioral area.
6. The licensee must provide documentation acceptable to the Board as to the licensee's training, education, credentials and qualifications before undertaking to perform procedures of this nature.
7. Procedures of this nature must be for a dental purpose.
8. Procedures of this nature may be performed by a licensed general dentist.
9. Procedures of this nature are defined as being limited to the injection of resorbable materials only.
10. Licensees performing procedures of this nature are subject to all provisions of the Dental Practice Act, Regulations and policies of the Board.

Protection of the public and the safety of the patient is the responsibility of the dentist. Patient protection is paramount. Although a dentist who conducts himself/herself in accordance with this policy may avoid disciplinary action by the Board of Dentistry, he or she may still face civil liability under some circumstances, and should therefore consult private counsel where doubt exists as to what actions are appropriate.

Policy adopted by the Board on April 10, 2009.

Compliance with Federal Trade Commission (FTC) Order

For three years following the date of the FTC's Decision and Order regarding the delivery of preventive dental services in public settings, the Board is required to publish, in its newsletter, the Notice, Complaint and Order of the FTC dated Sept. 6, 2007.

NOTICE

The South Carolina State Board of Dentistry has entered into a consent agreement with the Federal Trade Commission. In connection with the Commission's order issued pursuant to that agreement, which became final on Sept. 6, 2007, the Board is publishing this notice concerning the delivery of preventive dental services in public health settings:

The 2003 amendments to the Dental Practice Act (Act No. 45 of 2003) provide that the Board may not, directly or indirectly, require that a dentist conduct an examination of a patient as a condition of a dental hygienist who is working in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), which pertains to licensed dental hygienists employed within or contracted through the public health system, or any recodification thereof, performing oral prophylaxis or applying sealants or topical fluoride to that patient.

The Board is in full agreement with the legislative policy set forth in the 2003 amendments as recited above.

J. Douglas Snowden, D.M.D., President
South Carolina State Board of Dentistry

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

021 0128

**COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour**

In the Matter of

SOUTH CAROLINA STATE BOARD OF DENTISTRY.

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) Docket No. 9311
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the South Carolina State Board of Dentistry violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

STATEMENT OF THE CASE

1. Respondent South Carolina State Board of Dentistry ("the Board"), which consists almost entirely of practicing dentists, restrained competition in the provision of preventive dental care services by unreasonably restricting the delivery of dental cleanings, sealants, and topical fluoride treatments in school settings by licensed dental hygienists. Although the South Carolina General Assembly passed legislation in 2000 eliminating a statutory requirement that a dentist examine each child before a hygienist may perform cleanings or apply sealants in school settings, the Board in 2001 re-imposed the very examination requirement that the legislature had eliminated, and extended it to the application of topical fluoride in school settings as well. The effect of the Board's action was to deprive thousands of school children—particularly economically disadvantaged children—of the benefits of preventive oral health care services. The Board's anticompetitive action, undertaken by selfinterested industry participants with economic interests at stake, was contrary to state policy and was not reasonably related to any countervailing efficiencies or other benefits sufficient to justify its harmful effects on competition and consumers.

RESPONDENT

2. The Board is organized, exists, and transacts business under and by virtue of the laws of South Carolina, with its principal office at Synergy Business Park, Kingstree Building, 110 Centerview Dr., Columbia, South Carolina 29210.

3. The Board was created by the South Carolina legislature to supervise the practice of dentistry and dental hygiene.

4. By virtue of the Board's make-up, the licensed dentists of South Carolina regulate both themselves and dental hygienists.

5. The Board is composed of seven dentists, one dental hygienist, and one public member. The licensed dentists in South Carolina elect six of the dentist members for approval by the governor, and the dental-hygienist member is elected by licensed dental hygienists in South Carolina for approval by the governor. The governor of South Carolina appoints one of the dentist members and the public member.

6. While serving their membership terms, dentist members of the Board may, and do, continue to engage in the business of providing dental services for a fee. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed dentists in South Carolina compete with each other and with dentist members of the Board.

7. The Board is the sole licensing authority for dentists and dental hygienists in South Carolina. It is generally unlawful for an individual to practice or to offer to practice dentistry or dental hygiene in South Carolina unless he or she holds a current license to practice.

8. The Board is authorized by South Carolina law to take disciplinary action against any licensee who violates any rule or regulation promulgated by the Board. Disciplinary action by the Board may include the suspension or revocation of a license, or other limitations or restrictions on a licensee.

JURISDICTION

9. The Board is a state regulatory body and is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

10. Substantial sums of money flow into South Carolina from the federal government and other out-of-state payers for the purchase of preventive dental care services. The acts and practices of the Board, including the acts and practices alleged herein, have been or are in or affecting "commerce" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PREVENTIVE DENTAL SERVICES IN SOUTH CAROLINA

11. Dental hygienists are licensed health care professionals who specialize in providing preventive oral health services. Such services include cleaning teeth, taking x-rays, providing nutrition and dietary counseling, providing fluoride treatments, and applying dental sealants. Dental hygienists are also trained to detect signs of oral disease and to educate patients on maintaining optimal oral health.
12. There are over 2,200 dental hygienists licensed to practice in South Carolina. Dental hygienists in South Carolina practice in collaboration with a supervising dentist or under the direction of the South Carolina Department of Health and Environmental Control's public health dentist.
13. Firms owned by dental hygienists working in collaboration with a dentist (either supervised by a private dentist or working at the direction of South Carolina's public health dentist) can compete with dentists for the provision of preventive dental care services.
14. Many children in South Carolina suffer from oral health problems because they do not receive preventive dental care, particularly children in low-income families. Over 400,000 children – more than 40 percent of children in South Carolina – are Medicaid-eligible. In the early 1990s, only 12 percent of Medicaid-eligible children received preventive dental care services.
15. In 1988, the South Carolina General Assembly enacted a law specifically authorizing dental hygienists to provide preventive services in schools. That law, however, required that hygienists could provide cleanings and apply dental sealants only if a dentist had examined the child's teeth within the previous 45 days. The 1988 law did not significantly increase the delivery of dental hygienists' services in school settings.
16. In 2000, South Carolina substantially increased Medicaid reimbursement for dental services. With federal matching funds, about \$79 million became available annually for Medicaid-eligible dental services.
17. After Medicaid payment levels for dental care services increased, the number of South Carolina dentists participating in South Carolina's Medicaid-Dental program increased about one-third. More than 900 of the over 1,500 licensed dentists licensed in South Carolina now participate in the state's Medicaid-Dental program.

SOUTH CAROLINA GENERAL ASSEMBLY REMOVES A BARRIER TO THE PROVISION OF PREVENTIVE DENTAL CARE IN SCHOOLS

18. In 2000, the South Carolina General Assembly amended its statutes to make it easier for dental hygienists to deliver preventive dental care services in school settings. Prior to the 2000 amendments, South Carolina statutes provided that a dental hygienist could provide cleanings and sealants in a school setting only if:
 - (1) a supervising dentist examined the patient no more than 45 days before the treatment;
 - (2) a supervising dentist provided written authorization for the procedures;
 - (3) the patient was not an active patient of another dentist; and
 - (4) the patient's parents provided written permission for the treatment.
19. The 2000 amendments removed these requirements, except the requirement for parental consent. The 2000 amendments provided instead that a dental hygienist could apply topical fluoride and perform the application of sealants and oral prophylaxis "under general supervision." S.C. Acts § 40-15-80(B) (2000). General supervision "means that a licensed dentist or the South Carolina Department of Health and Environmental Control's public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed." S.C. Acts § 40-15-85 (2000). By virtue of the 2000 amendments, the Board could not require a dentist examination as a condition of a dental hygienist's providing preventive services in a school setting.
20. Upon signing the 2000 amendments, South Carolina's governor announced: "This new law removes a regulation that hindered access to dental care."
21. The 2000 amendments embodied a policy to remove artificial barriers to the provision of oral preventive health care by dental hygienists to school children.
22. Health Promotion Specialists ("HPS") is a firm owned by a dental hygienist that provides preventive dental services to South Carolina children. HPS employs dental hygienists to provide those services and contracts with dentists to supervise the hygienists.
23. In January 2001, HPS began providing cleanings, sealants, topical fluoride treatments, and other preventive dental services on-site to children in South Carolina schools. By July 2001, HPS had screened over 19,000 children, and provided preventive services (cleanings, sealants, and topical fluoride treatments) to over 4,000 children, including nearly 3,000 Medicaid-eligible children. Because HPS's services were provided in schools, they were more convenient for the families of the children served. Dentists in traditional office practices risked losing patients to HPS.

24. Because a tremendous unmet need for preventive dental care remained, HPS expected to treat more than twice as many students in the fall semester of 2001 as it had in the spring semester. Relying on this forecast, HPS more than doubled the number of hygienists it employed.

BOARD CONDUCT

25. The Board has restrained competition in the provision of preventive dental care services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the ability of dental hygienists to deliver preventive services in school settings. In particular, on July 12, 2001, the Board adopted an emergency regulation governing dental hygienist practice in school settings that re-imposed the same examination requirement that the General Assembly removed in 2000: that a supervising dentist had to examine the patient no more than 45 days prior to treatment.

26. For the regulation to become effective, it required the approval only of the Board, a majority of which consists of practicing dentists elected by the licensed dentists of South Carolina. No financially disinterested state actor approved the regulation before or while it was in effect. Under state law, the regulation terminated after 180 days.

27. The emergency regulation conflicted directly with the policy articulated by the General Assembly, by re-imposing the precise barriers to dental hygienists' providing preventive services to school children that the legislature had just removed.

28. The effect of the emergency regulation was to reduce substantially the number of children (particularly economically disadvantaged children) who received preventive dental care. During the latter half of 2001, the period when the emergency regulation was in effect, HPS screened fewer than 6,000 children, about 13,000 fewer than it had screened during the first half of 2001. The emergency regulation also limited HPS's ability to provide preventive dental care; as a result, the regulation deprived thousands of South Carolina children of preventive dental care.

29. The Board's requirement that a dentist examine each child before a dental hygienist provides a cleaning, sealant, or fluoride treatment in school settings was not reasonably related to any efficiencies or other benefits sufficient to justify its harmful effect on competition and consumers.

STATE ADMINISTRATIVE REVIEW FINDS IMPOSITION OF THE DENTIST PREEXAMINATION REQUIREMENT IN SCHOOL SETTINGS CONTRARY TO THE 2000 AMENDMENTS

30. In August 2001, the Board published a proposed permanent regulation substantially identical to the emergency regulation, which by law would lapse in January 2002.

31. Pursuant to South Carolina law, an administrative law judge was required, after a public hearing, to determine whether the proposed permanent regulation was a reasonable exercise of the Board's authority. The administrative law judge's report, along with the proposed regulation, had to be forwarded to the General Assembly for review in order for the permanent regulation to become effective.

32. In February 2002, the presiding administrative law judge issued a report that concluded that the Board's proposed permanent regulation was unreasonable and contravened state policy to the extent it reinstated the dentist pre-examination requirement that the legislature had eliminated in 2000.

33. The administrative law judge found that deletion of the statutory pre-examination requirement reflected a state policy adopted by the South Carolina legislature during its 2000 session to increase access to preventive oral health care for low-income children. The administrative law judge recommended that the Board delete the pre-examination requirement from its proposal before forwarding it to the legislature.

34. After issuance of the administrative law judge's report, the Board did not submit its proposed permanent regulation to the General Assembly for review. As a result, the proposed regulation did not take effect.

THE CURRENT THREAT TO THE DELIVERY OF PREVENTIVE DENTAL SERVICES IN SOUTH CAROLINA

35. After the emergency regulation lapsed, at least three firms, including HPS, provided preventive dental care in schools pursuant to contracts with the Department of Health and Environmental Control. Under the contracts, these firms provided cleanings, fluoride treatments, and sealants, under standing orders, without a mandatory pre-examination by a dentist.

36. During the latter part of 2002, HPS provided preventive dental care treatments to nearly 10,700 school children, 6,000 more than during the same period in 2001, when the Board's emergency regulation was in effect.

37. In May 2003, the South Carolina General Assembly enacted legislation that expressly provides that dentist examination requirements applicable in some settings do not apply to dental hygienists' provision of preventive oral health care services, including cleanings, sealants and topical fluoride, when they are working in public health settings under the direction of the Department of Health and Environmental Control.

38. Nonetheless, when the Board in March 2003 considered the statutory revisions that the General Assembly later enacted, it maintained that in all settings where a dental hygienist provides treatment – whether public health or private practice – a licensed dentist has to see the patient and provide a treatment plan.

ANTICOMPETITIVE EFFECTS

39. The Board's acts and practices have had the effect of restraining competition unreasonably and injuring consumers in the following ways, among others:

A. hindering competition in the delivery of cleaning, sealant, topical fluoride, and other preventive dental services to school-aged children in South Carolina; and

B. depriving thousands of school children—particularly economically disadvantaged school children—of the benefits of preventive oral health care.

VIOLATION

40. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

NOTICE

Notice is hereby given to the Respondent that the fourteenth day of January, 2004, at 10:00 a.m., or such later date as determined by the Commission or by an Administrative Law Judge of the Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, as the place when and where a hearing will be had on the charges set forth in this Complaint, at which time and place you will have the right under the FTC Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the Complaint.

Pending further order of the Commission, the Commission will retain adjudicative responsibility for this matter. *See* § 3.42(a) of the Commission's Rules of Practice for Adjudicative Proceedings. Pursuant to § 3.12 of those Rules, the Commission hereby allows you until 30 days from the date of service of this Complaint upon you to file either an answer or a dispositive motion. If you file a dispositive motion within that time, your time for filing an answer is extended until 10 days after service of the Commission's order on such motion. If you do not file a dispositive motion within that time, you must file an answer.

An answer in which the allegations of the Complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the Complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the Complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the Complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the Complaint and, together with the Complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under § 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under §3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the Complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the Complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The Commission or the Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 14 days after an answer is filed by Respondent. Unless otherwise directed by the Commission or the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in an adjudicative proceeding in this matter that the Board is in violation of Section 5 of the Federal Trade Commission Act, as alleged in the Complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to, an order that requires the following:

1. The Board shall cease and desist from, either directly or indirectly, requiring that a dentist conduct an examination of a patient as a condition of a dental hygienist who is working in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), or any

recodification thereof, performing oral prophylaxis or applying sealants or topical fluoride to that patient, unless the examination requirement is adopted by the South Carolina General Assembly after the date that the order becomes final.

2. The Board shall mail a copy of the Complaint, order, and an explanatory notice to each Board member; each officer, director, representative, agent, and employee of the Board; each person licensed to practice dentistry or dental hygiene in South Carolina; and the superintendent of each school district in South Carolina.

3. The Board shall take such other measures that are appropriate to correct or remedy, or prevent the recurrence of, the anticompetitive practices in which it engaged.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twelfth day of September, 2003, issues its Complaint against Respondent South Carolina State Board of Dentistry.

By the Commission.

Donald S. Clark, Secretary

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch**

In the Matter of

SOUTH CAROLINA STATE BOARD OF DENTISTRY

Docket No. 9311

DECISION AND ORDER

The Federal Trade Commission ("Commission") having heretofore issued its Complaint charging South Carolina State Board of Dentistry ("the Board"), hereinafter sometimes referred to as "Respondent," with violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(f) of the Commission's Rules, 16 C.F.R. § 3.25(f), and the Commission having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure described in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent is organized, exists, and transacts business under and by virtue of the laws of South Carolina, with its principal office at Synergy Business Park, Kingstree Building, 110 Centerview Dr., Columbia, South Carolina 29210.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "South Carolina State Board of Dentistry" or "the Board" means South Carolina State Board of Dentistry, its members, officers, directors, committees, representatives, agents, employees, and successors, including, but not limited to, its executive director and investigators; and
- B. "Dental hygienist" means a person who practices dental hygiene, as defined in S.C. Code of Laws § 40-15-80.

II.

IT IS FURTHER ORDERED that Respondent shall provide written notice to the Commission at least (30) thirty days prior to the promulgation of any proposed or final rule, regulation, policy, issuance of a formal complaint in a disciplinary action, or other action of the Board, relating to the provision by dental hygienists of preventive dental services in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), or any recodification thereof, including, but not limited to, an action concerning a dentist who authorizes, supervises, or bills for, the provision by dental hygienists of preventive dental services in a public health setting.

PROVIDED, HOWEVER, that if protection of the public health prevents Respondent from notifying the Commission thirty days in advance of an action, then Respondent shall provide the notice required by this Paragraph as soon as is reasonably practicable.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail or electronic mail a notice in the form set forth in Appendix A of this Order, with a copy of the Order and Complaint attached, to:
 - 1. each Board member;
 - 2. each officer, director, representative, agent, and employee of the Board; and
 - 3. each person licensed to practice dentistry or dental hygiene in South Carolina.
- B. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a notice in the form set forth in Appendix A of this Order, with a copy of the Order and Complaint attached, to the superintendent of each school district listed in Appendix B.
- C. Within thirty (30) days after the date on which this Order becomes final, publish a notice in the form set forth in Appendix A of this Order, along with a link to a copy of the Order and Complaint, on the South Carolina State Board of Dentistry website, and maintain these materials on the website for three (3) years from the date this Order becomes final.
- D. Publish a notice in the form set forth in Appendix A of this Order in the first South Carolina State Board of Dentistry newsletter to be published after the date this Order becomes final, and annually thereafter for three (3) years.
- E. For a period of three (3) years after the date this Order becomes final, distribute by firstclass mail or electronic mail a notice in the form set forth in Appendix A of this Order, and attaching a copy of the Order and Complaint, to:
 - 1. any person who becomes a member of the Board, within thirty (30) days of the time his or her membership begins;
 - 2. any person who becomes an officer, director, representative, agent, or employee of the Board, within thirty (30) days of the time that he or she assumes such responsibility with the Board; and
 - 3. any person who becomes licensed to practice dentistry or dental hygiene in South Carolina, within thirty (30) days of the time he or she becomes licensed.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, the Board shall submit to the Commission a verified written report detailing the manner and form in which the Board has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the Board's authority to regulate the practice of dentistry and dental hygiene in South Carolina that may affect compliance obligations arising out of this Order, such as the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on September 6, 2017.

By the Commission.
Donald S. Clark Secretary

ISSUED: September 6, 2007